

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

**Federal Communications Commission
Office of the Secretary**

To: The Commission

October 5, 1992

SUMMARY

PageNet is the largest and fastest growing paging company in the United States. As such, PageNet is in an exceptionally good position to evaluate the Commission's proposals to modify Part 22 in order to cost effectively speed service to the public, and to propose modifications of its own which will assist the Commission in achieving those ends.

PageNet believes that the interoperability of several of the Commission's proposed rules will give carriers the appropriate incentives to build and operate systems quickly. PageNet supports key components of the Commission's proposals including (1) the first come, first served licensing procedure; (2) the automatic termination of authorizations for stations not built; (3) prohibitions on refiling for licenses which licensees permit to expire without constructing; and (4) the provisions that would establish a finder's application. However, PageNet strongly believes that this paradigm needs one more element in order to maximize incentives and reduce administrative costs to both carriers and the Commission -- the Commission must expand the geographic scope of existing and new licenses.

A system or market area approach to licensing, as opposed to the current transmitter by transmitter approach, would reflect economic and market realities, be consistent with the Commission's proposed licensing scheme for PCS, and provide for

greater economies of scale and scope. PageNet proposes that licenses be awarded for Major Trading Areas.

In addition, PageNet believes that some of the Commission's proposed rules can be bettered from a technical and practical perspective. For example, PageNet believes that the Commission should allow the use of frequency-agile transmitters and permit 900 MHz facilities to be licensed for up to 3500 watts of power. With these and other revisions or clarifications suggested by PageNet in its comprehensive analysis of the proposed rules, PageNet believes that the Commission will ensure its laudable goals of allowing paging carriers to expand and provide a diversity of high quality services to their customers, while efficiently and effectively expediting service to the public.

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To: The Commission

Paging Network, Inc. ("PageNet"), by its attorneys, and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby submits its comments regarding the Notice of Proposed Rulemaking ("Notice") issued in the above-captioned proceeding. As set forth below, PageNet supports the Commission's "first come, first served" licensing approach, which PageNet believes is a key component of any proposal to speed up licensing of paging facilities, and ultimately service to the public. PageNet also concurs with other directly interrelated provisions, e.g., automatic termination of licenses if licensees fail to construct; prohibitions on refiling for new facilities where authorizations are permitted to expire, and finder's applications. In order to achieve the Commission's goals, however, PageNet strongly recommends that the Commission

expand the geographic scope of paging licenses to encompass major trading areas.

Statement of Interest

PageNet is the largest and fastest growing paging company in the United States, providing paging services in twenty-four (24) states and the District of Columbia. PageNet has achieved its phenomenal growth by obtaining thousands of license grants from the Commission, building the systems licensed thereunder, and providing service to 1.8 million subscribers in accordance with the Commission's rules.¹ As such, PageNet is in an exceptionally good position to evaluate the Commission's proposals to modify Part 22 in order to cost effectively speed service to the public, and to propose modifications of its own which will assist the Commission in achieving those ends.

PageNet has consistently been able to efficiently utilize spectrum and satisfy consumer demand by offering state of the art paging services at the lowest possible cost. PageNet's aggressive business plan reflects its intention to continue to do so. Nonetheless, its and other carriers' ability to provide expanded services rapidly are limited by the speed with which the Commission is able to issue initial licenses. Therefore, PageNet has a keen interest in assisting the Commission in formulating rules that will

¹ PageNet is almost twice as large as its nearest competitor.

enable PageNet to better serve its current and potential customers.

I. INTRODUCTION

The Commission's proposed Part 22 Rewrite is premised on a few major themes, which PageNet endorses unqualifiedly. These are: 1) expediting the provision of mobile services to the public; 2) easing, to the extent possible, the administrative burdens and costs the Commission's licensing scheme imposes on carriers; and 3) easing, to the extent possible, the administrative burdens and costs the Commission's licensing scheme imposes on the Commission. Each of these laudable goals can and should be achieved within the confines of this proceeding.

In these Comments, PageNet supports key components of the Commission's proposals, including 1) the "first come, first served" licensing procedure; 2) the automatic termination of authorizations for stations not built; 3) prohibitions on refiling for licenses which licensees permit to expire without constructing; and 4) the provisions that would establish a finder's application.

PageNet believes that the interoperability of these rules will give carriers the appropriate incentives to determine which geographic areas they desire to serve, to file for and ultimately service these areas, or face the fact that competitors may choose to serve those areas. But this paradigm needs one more element in order to maximize those

incentives and truly reduce administrative costs of both carriers and the Commission. In order to achieve these goals, PageNet believes it critical that the Commission expand the geographic scope of existing and new licenses for 900 MHz paging frequencies.²

A system or market approach, as compared to the transmitter-by-transmitter approach the Commission currently utilizes, would greatly reduce the preparation and processing time experienced by the applicants and the Commission staff, respectively. Further, area licensing would reflect the economic and market realities both carriers and customers recognize; that is, consumers desire service by market, whether regional or national, not by transmitter, and carriers must be able to provide services in this manner in order to compete.

PageNet also offers comments concerning how some of the rules can be bettered from a technical and practical perspective. Among the most significant, PageNet believes that an entirely different view of height and power limitations is required with respect to the licensing of stations in the 900 MHz band -- one which allows for licensing with maximum power of 3500 watts at any height. With the modifications proposed by PageNet, the Commission's revisions to Part 22 will enable the paging industry to

² The Commission may wish to reevaluate its transmitter-by-transmitter approach to licensing on other paging frequencies as well.

continue to grow exponentially by maximizing spectrum usage and facilitating prompt response to rapidly changing technology and the ever-evolving needs of consumers.

II. GEOGRAPHIC AREA OR "MARKET SERVED" LICENSING WILL SPEED SERVICE TO THE PUBLIC AND DRAMATICALLY REDUCE ADMINISTRATIVE BURDENS

PageNet proposes that the Commission revise its regulatory scheme to license paging services on a "market served" basis rather than a "transmitter-by-transmitter" basis. Licenses for service areas, such as major trading areas ("MTAs"), would provide for greater flexibility in the design and implementation of paging systems, and would provide for greater economies of scale and scope.³

This licensing scheme takes into account the realities of the marketplace. The needs of the public vary over a continuum from local service through wide area and regional coverage to complete nationwide paging. Throughout PageNet's history, its customers have demanded greater geographic coverage with each passing year.

³ Licensing paging on a transmitter-by-transmitter basis has created unproductive regulatory and transaction costs, and resulted in associated delays. The typical six-month period required for processing Form 401 base station applications must be built into the scheduling and expansion planning by applicants. Where market needs change or a site is lost, these delays often pose additional difficulties for carriers. The sheer reduction in the number of applications to be generated by applicants and processed by the Commission represents a significant saving in cost and manpower requirements for both parties.

In order for this continuum of service to be provided to the public in the most cost-effective manner, it must be carried over a common infrastructure. A geographic service area licensing scheme facilitates the development of such systems. Local users demand solid coverage and intense transmitter density in urban areas, while regional users insist upon the broadest possible geographical coverage. Under geographic service area licensing the provision of service to the widest possible variety of users will spread cost over a greater number of pagers and minimize the cost of service to the end user.

Both carriers and the Commission will achieve substantial administrative savings from this approach. Each market would encompass a substantial number of transmitter sites, thus eliminating the need for individual applications for each of those transmitters. The diminution in the number of applications to be prepared and processed by applicants and the Commission, respectively, reduces the workload on each. Staff review time of applications would be reduced; the number of public notices required to be issued would be reduced; staff time and resources spent on resolving issues concerning the operations and modifications of individual transmitters vis-a-vis the application process would be reduced.

Significantly, a service area licensing scheme for paging would also be consistent with what the Commission has proposed for narrowband PCS services, including advanced

messaging services.⁴ The Commission has recognized that large regional service areas would provide for flexibility in the implementation of 900 MHz PCS systems. In doing so, the Commission has accepted the realities of the marketplace and acknowledged the cost saving efficiencies to be realized. The same economies of scale and scope cited by the Commission in the PCS proceeding apply to paging services generally. Moreover, licensing paging services under a scheme consistent with narrowband PCS will create even greater economies of scale and scope. To a large extent, the same carriers who provide paging services have proposed to and will provide narrowband PCS.⁵ A consistent licensing scheme will enable these providers to develop a common infrastructure, including switches, interconnection, voice mail, and antenna sites for a continuum of services, reducing the carriers' costs and simplifying its procedures -- again facilitating expeditious service to the public at a lower price. Moreover, a consistent licensing scheme will facilitate carriers' ability to structure management and sales for all services on a market basis, as the market demands now, making carriers better able to serve the needs of their individual customers.

⁴ See Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, ET Docket 92-100, FCC 92-333 released August 14, 1992 at ¶ 62 ("PCS Notice").

⁵ See PCS Notice at ¶¶ 152-63. Many of the nation's premier providers of paging services, including PageNet, PageMart, PacTel, Dial Page and MTel, have developed proposals and will seek licenses for narrowband PCS services.

PageNet proposes that licenses be awarded for the forty seven (47) "Major Trading Areas" ("MTAs") defined in the Rand McNally Commercial Atlas and Marketing Guide⁶ (adding Alaska and Puerto Rico for a total of 49 regional licenses). Licenses would be granted on a first come, first served basis and new licensees would be protected from new applicants on a frequency for one year. New licensees (those applying to provide service within a geographic service area on a channel not yet licensed in that area) would be required to build out their systems to be capable of serving some percentage, perhaps 50%, of the population within those MTAs within one year. If a licensee failed to build out its system within one year, that licensee would be required to forfeit its license for that channel, returning the frequency to the available pool of frequencies, and that geographic service area would again be considered "unserved" as to that channel.

Existing licensees would be "grandfathered" into these MTAs. Specifically, where one carrier is licensed within an MTA, it would be afforded one year to achieve the prescribed market coverage. If at the end of one year the licensee had not reached that level of coverage, the remaining portion of the MTA would be deemed unserved area subject to application by another carrier on a first come,

⁶ Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, pp. 36-39; see also Exhibit A attached hereto.

first served basis. Where there is more than one incumbent licensed in the MTA, those existing licensees would be entitled to expand their service areas based on current 70-mile protection criteria, but no new applicants would be authorized for one year. After one year, areas within the MTA which the licensees did not then serve would be considered "unserved" and subject to application by others.⁷

The Commission can find precedent for such a scheme in its cellular rules.⁸ Initial cellular systems were granted a five year period during which the systems could be expanded within the MSAs and RSAs, free from the filing of competing applications. Subsequently, the Commission adopted rules for the acceptance, processing, and selection of applications for service to those areas into which systems had not expanded and which remained unserved.⁹

As with cellular, it is anticipated that sufficient demand may exist in unserved areas to justify building systems. Moreover, as population centers expand, demand in the future could justify the addition of a new system or

⁷ Entities submitting applications to serve an MTA after the issuance of the Notice in this proceeding would not be grandfathered. This will avoid any possibility of a rush by prospective licensees to gain improper advantage as incumbents and avoid the proposed one year "build it or lose it" requirement.

⁸ See 47 C.F.R. §§ 22.6, 22.902.

⁹ See Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the cellular service, 6 FCC Rcd 6185, 6197 (1991).

systems in areas which currently have low population centers. The Commission allows applicants for unserved cellular areas to determine when they are ready to file for an area based upon projected demand and other business reasons, which would equate, for these purposes, to first come, first served filings for these so-called unserved areas.

The Commission's primary goal should be to enable carriers to create seamless and integrated paging networks which allow subscribers to receive high quality service on a nationwide basis if desired. At the same time, the Commission should strive to make this service available to the public as expeditiously as possible. PageNet believes that market area licensing is the best method through which to achieve these goals.

III. COMMISSION PROPOSALS TO FACILITATE THE RAPID LICENSING AND CONSTRUCTION OF SYSTEMS SHOULD BE ADOPTED

A. The Commission Should Grant Applications on a First Come, First Served Basis with Restrictions on Refiling (§§22.509 and 22.120)

Central to the Commission's efforts to expedite service to the public is the first come, first served licensing procedure proposed in the Notice. PageNet fully supports the Commission's proposal that all mutually exclusive applications in the Public Mobile Services be processed on a first come, first served basis, and applauds the Commission's initiative in creating incentives for prospective service providers to take an active rather than

passive posture in influencing the growth and development of the paging industry. PageNet agrees that a first come, first served policy would eliminate the need for most of the random selection processes the Commission now conducts, would expedite the processing of applications and would act as a deterrent to applicants filing applications simply to impede a competitor's growth.¹⁰

Unlike the current rules, which enable entities who are not ready and willing to build systems themselves to file mutually exclusive applications simply to frustrate a qualified applicant, the first come, first served procedure, coupled with restrictions on refiling, forces all applicants to "come to the table" with certainty about their business plans. The bottom line of this proposal is that consumers will get service more quickly.¹¹

¹⁰ In addition, it would bring Part 22 application filing procedures into line with Parts 90 and 94 where, in some instances, frequencies, e.g., those allocated for paging control, are shared between private and common carrier users.

¹¹ Under the first come, first served licensing procedure, an applicant will know as soon as its application appears on Public Notice whether any mutually exclusive applications have been filed. Thus, it can preconstruct with a reasonable degree of certainty that it will receive a grant. Since the applicant proceeds at its own risk during the preconstruction phase, not at the risk of the public or the Commission, PageNet believes that the Commission should liberalize its preconstruction rules. Enabling the applicant to preconstruct as soon as its application appears on public notice is consistent with the Commission's desire to expedite service to the public (in some instances, service can commence the day after grant is received), and raises no countervailing detriments.

Further, as the Commission recognizes, the implementation of first come, first served licensing coupled with restrictions on refiling for the same territory, should those licenses expire unconstructed, minimizes the possibility of any paging frequency being assigned to a licensee filing applications merely to delay another carrier's entrance or expansion into a market. Carriers would be reluctant to use those tactics if their use would ultimately preclude them from expansion on those frequencies themselves within that territory.¹²

As noted, the interrelationship of the proposed rules creates incentives on the part of prospective and existing licenses to file only for those systems that they intend to build and operate. Under PageNet's geographic area licensing scheme, this will be especially true. Carriers would not be likely to apply for an MTA unless they intended to build and operate within the geographic territory for which they were licensed for fear that they would be thereafter precluded from doing so.

Once a carrier has made the significant investment necessary to construct a real system, particularly one the size of an MTA, it will not permit that system to remain idle for long. Much as it makes no sense to build a hotel and not rent any rooms, it makes no sense for a carrier to build a

¹² Should the Commission not believe this incentive sufficient, it could consider monetary penalties for those who do not construct systems proposed.

system and not look for a return on its investment.¹³ Given the nature of the Commission's rules, providing service to subscribers will be the only means through which carriers can earn this return.¹⁴

B. PageNet Supports The Commission's Bolstering of Its Automatic Termination Rules and the Elimination of Reinstatement Provisions (§22.142)

PageNet supports the Commission's clarification of its rules to state specifically that licenses terminate "without specific Commission action" in instances where licensees fail to construct in accordance with the Commission's Rules. PageNet concurs that authorizations should automatically expire for failure to commence service in the time period required by the rules, and where service has been discontinued, without further action by the Commission.¹⁵ PageNet also believes the elimination of

¹³ This is less true of transmitter-by-transmitter licensing because the investment which could lie fallow is so much less.

¹⁴ Applicants or petitioners whose interests lie solely in speculation and warehousing would also be discouraged by the Commission's limitation on settlements to "legitimate and prudent expenses of the petitioner," as described in Section 22.129.

¹⁵ In the event the Commission retains its transmitter-by-transmitter licensing scheme, PageNet believes that the Commission's goal to efficiently speed the delivery of service to the public would be enhanced by a reduced construction period. Specifically, PageNet proposes that the period of construction be shortened from one year to six (6) months. Given an applicant's ability to preconstruct and the reasonable degree of certainty that the first come, first served process provides concerning grant, abbreviating the construction period will have no

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reinstatement opportunities appropriate. Although some commenters may argue that the Commission's approach is too rigid, it is the very certainty that a license will expire that reinforces incentives for carriers to construct systems within the time frames allowed. Further, it is the certainty that the license automatically terminates, and that the licensee has no procedural devices to forestall that eventuality, which permits the Commission to accept applications for filing on those frequencies upon automatic expiration. The ability to file for a frequency immediately upon the expiration of a license for the underlying facility eliminates the need for applicants to wait for public notice of the frequency's availability. It also rewards those applicants diligent enough to monitor the licensing process and the utilization of frequencies. Again, such a scheme is consistent with the Commission's goal of promoting the expeditious provision of service to the public.¹⁶

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debilitating impact on qualified applicants. It is PageNet's experience that transmitter delivery takes less than three (3) months and that most other equipment is available overnight. As applicants will have site availability when they file, PageNet can see no reason why a six (6) month time table for construction is unrealistic or impractical. Moreover, an abbreviated construction period will minimize the possibility of any paging frequency being assigned to a licensee that is incapable or unwilling to begin construction promptly and diligently carry it to completion.

¹⁶ As previously stated, PageNet's position overall is that in order to speed the delivery of service to the public, an area licensing scheme would be preferable to the micromanagement of individual transmitter construction

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The Commission should at the same time recognize that certain unintended applications of this rule, in combination with Sections 22.144 and 22.121, could cause problems concerning the way carriers conduct business.¹⁷ The Commission should, therefore, clarify that this rule does not apply to instances where, prior to expiration, a carrier voluntarily returns its license because, for example, it has involuntarily lost a site and cannot relocate the facility. Under these circumstances, carriers should not be subject to a rule which would preclude them from refiling in the same area for one year.

**C. The Commission Should Adopt a
Finder's Application Procedure (§ 22.167)**

PageNet fully supports the Commission's proposal to adopt a finder's application procedure in the Public Mobile Services along the same lines as finder's preferences were recently implemented in the Private Radio Services.¹⁸ Like the first come, first served licensing procedure, the

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schedules as contemplated by the current rules and these proposed new rules. Area licensing would eliminate the need to be concerned with the expiration dates of individual authorizations.

¹⁷ Section 22.121 would prohibit refiling for the facilities for one year following automatic termination of an authorization pursuant to Section 22.144.

¹⁸ See 47 C.F.R. § 90.173(k); see also Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations, 6 FCC Rcd 7297, 7304-05 (1991).

finder's application builds on the cornerstone of the Commission's commitment to expedite service to the public, as it will further help to ensure that frequencies are assigned to persons who will use them productively. Under the Commission's proposal, an applicant would be able under certain circumstances to file a "finder's" application for a Public Mobile Service channel that is assigned, but is not currently being used. Specifically, where an authorization terminates automatically under the provision of Section 22.144 for failure to timely commence service to the public or because service has been permanently discontinued, an applicant may submit an application without regard to protection of the facilities for which authorization has terminated. While under the present rules such an application would be dismissed as defective, under the proposed rules it would be kept on file pending the outcome of a staff investigation into the licensee's alleged noncompliance with the Commission's construction and operation rules. If the Commission found that the licensee was not complying with the rules, the licensee could be subject to a forfeiture and the Commission could recover and reassign the affected channels. The applicant's finder's application would be considered the first filed for the recovered channel.

The potential benefits of implementing a finder's application program are clearly in the public interest. PageNet believes that the finder's application program will enhance the Commission's management of frequency bands by

assisting the Commission with its enforcement and compliance activities, facilitating the recovery of underutilized channels, providing increased incentives for licensee self-policing and improving the accuracy of the Commission's database.¹⁹

In many areas of the country, it is difficult for new applicants to become licensed or for existing licensees to expand their systems because of the scarcity of available spectrum. By offering a means for recapturing unused channels, the Commission will expand licensing opportunities in these areas. The finder's application program will serve to supplement the Commission's compliance efforts by providing incentives for parties to observe public land mobile usage and identify those who have failed to construct, place in operation, or continue to operate their stations. As a result, the Commission will be better able to uncover those permittees who are holding authorizations for speculative reasons without intending to offer service.

¹⁹ PageNet recommends the adoption of procedural safeguards similar to those contained in Section 90.175(k)(2) and (3) of the Commission's Private Radio rules with respect to disposition of mutually exclusive finder's applications, service on target licensees and the requirement that the finder's application be submitted in the form of a sworn affidavit or declaration pursuant to Section 1.16 of the rules. A waiting period of 180 days following the termination of the authorization, as required by Section 90.175(k)(2), would not comport with the Commission's intent here to enhance rapid reassignment of channels and service to the public. Therefore, PageNet recommends that the Commission permit finder's applications to be filed immediately after the automatic termination of a license pursuant to Section 22.144.

However, as fully demonstrated below, the success of the finder's application program depends upon further clarification of the Commission's rules concerning construction and operation for purposes of enforcement.

D. The Commission Should Clarify its Rules Concerning Construction and Operation (§§22.142 and 22.144)

There has long been confusion in the paging industry regarding the relationship between "construction," "operation," and "commencement of service to the public." Under the current rules, some carriers believe that they have satisfied the construction criteria if an authorized facility is capable of providing service on the expiration date of its construction permit. Others may believe that construction is not complete until the carrier is actually offering service to the public, i.e., has one or more subscribers. The proposed rules apparently attempt some clarification by indicating that "stations must begin providing service to the public no later than the date of required commencement of service specified on the authorization. If service to the public has not begun by the date of required commencement of service, the authorization terminates . . . without action by the Commission. . . ." See Notice at 34, § 22.142. Still, the new rule retains most of the former ambiguity because it does not endeavor to define "commencement of service to the public." It is unclear from the face of the rule whether "commencement of service" requires one subscriber, one

hundred subscribers, an ad in the Yellow Pages or the technical capability of providing service.

PageNet urges the Commission to adopt a definitive standard as to what constitutes "commencement of service" to enable licensees to determine with absolute certainty whether or not they meet the Commission's criteria and have satisfied the conditions associated with their construction permits. The need for such a standard is particularly acute given the risks associated with the finder's application and automatic termination provisions. For instance, the finder's application provision permits "finders" to file applications where a licensee is not in compliance with the Commission's "construction and operation rules." Thus, the ability of a licensee to determine with absolute certainty whether it has "commenced service" is critical.

PageNet suggests that the Commission clarify its rule to be more consistent with the realities of the marketplace. To that end, the Commission should require that a "constructed" facility be capable of the transmission and reception of signals between a base station and at least one associated pager from the public switched telephone system. Its rule should specify that the facility must be physically installed, interconnected and performing Section 22.313 station identification beginning on the expiration date of the construction permit, if not before. In other words, the Commission should establish a litmus test under which, using the "constructed" facility, a subscriber can obtain a pager

on the system and can pick up a phone and make the associated pager "beep."

This definition, which would require substantial investment by the licensee, including phone lines and a paging switch, would make the cost of spectrum warehousing significantly greater. While deterring abuse, the rule would ease the burden on paging systems for legitimate purposes. Most importantly, it would accommodate the needs of wide area systems. Specifically, such a provision would allow large systems under common control, whose numerous construction permits bear slightly different expiration dates, to be completed without having to implement partial service. This scheme ultimately benefits consumers, who would not be faced with unattractive, confusing and constantly changing service offerings from paging providers.²⁰ As clarified, the rule would require that every expense antecedent to the delivery of paging service to the public be expended by the licensee on the date its authorization expires, so that the system is real-world operational and capable of transmitting a page to an associated remote paging unit. Having required the licensee to construct a fully functional network, the Commission would assure that the carrier will avoid allowing such an infrastructure to remain unused. This approach,

²⁰ Obviously, it is PageNet's belief that the best way to deal with this problem of multiple, staggered expiration dates and uneven schedules for commencement of service to the public is to implement market area licensing of paging frequencies above 900 MHz.